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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JUSTIN ROOSMA and ELIZABETH
11 ROOSMA,

12 Plaintiff,

13 v.

14 PIERCE COUNTY, CORRECT CARE
15 SOLUTIONS LLC, PAUL PASTOR,
16 and PATTI JACKSON-KIDDER,

17 Defendants.

CASE NO. 3:16-cv-05499-RJB

ORDER ON PIERCE COUNTY
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

18 THIS MATTER comes before Court on the Motion for Summary Judgment of
19 Defendants Pierce County, Sheriff Paul Pastor, and Chief Patti Jackson-Kidder (Pierce County
20 Defendants). Dkt. 102. Plaintiffs and Defendant Correct Care Solutions, LLC (CCS) filed
21 Responses, Pierce County Defendants filed a Reply, and Defendant CCS filed a Surreply. Dkts.
22 131, 134, 142, 149. The Court has considered the pleadings filed in support of and in opposition
23 to the motions and the remainder of the file herein. No party requested oral argument.

24 The outcome of this motion, and ultimately entirety of this case, rests on the showing by
Plaintiffs' counsel. While Plaintiffs may have constructed a plausible case theory, Plaintiffs
needed to counter Defendants' motion with evidence showing issues of material fact. Instead,

1 Plaintiffs submitted an incomplete showing on the most necessary of elements or relied on bare
2 representations by counsel. The Federal Rules of Civil Procedure orient this Court towards
3 resolving cases on their merits, but the Court can only consider the record submitted. Plaintiffs
4 have failed to meet their burden. As discussed below, the claims against Pierce County
5 Defendants should be dismissed, Pierce County Defendants' cross-claim should be remanded,
6 and any pending motions should be stricken as moot.

7 I. BACKGROUND

8 **A. The record considered.**

9 Pierce County Defendants have incorporated the Statement of Facts as set out in
10 Defendant CCS' Motion for Summary Judgment. Dkt. 102 at 2. *See* Dkt. 90. Pierce County
11 Defendants have supplemented the record in two respects: (1) with facts relevant to the two
12 individually named defendants, Paul Pastor and Patti Jackson-Kidder, and (2) with facts relevant
13 to a contract dispute between Defendant Pierce County and Defendant CCS ("the Pierce
14 County/CCS contract"), which is the subject of a cross-claim by Pierce County Defendants
15 against Defendant CCS.

16 Plaintiffs' Response refers to no declarations, deposition transcripts, a sworn complaint,
17 or other attachments, but the pleading states an intent to incorporate facts by reference. Dkt. 134
18 at 2. *See* Dkt. 134 at 4-10. This appears to be reliance by Plaintiffs on the record submitted by the
19 defendants, as well as the record submitted by Plaintiffs in their Response to Defendant CCS'
20 Motion for Summary Judgment. *See* Dkts. 108, 110, 112.

21 Pierce County Defendants' Reply further supplements the circumstances surrounding the
22 Pierce County/CCS contract with declarations. Dkts. 144, 145, 146. Defendant CCS, in its
23 Surreply, moves to strike portions of the declarations and related arguments. Dkt. 149.
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1 **B. Underlying incident facts.**

2 Because Plaintiffs have not further supplemented the record, facts recited do not
3 substantively differ from those in the Court’s prior Order. *See* Dkt. 127.

4 This case centers on an injury to Plaintiff Justin Roosma while in custody at Pierce
5 County Jail in mid-2014. Mr. Roosma was medically screened at Pierce County Jail on April 28,
6 2014. Dkt. 81-1 at 4. A Screening Questionnaire signed by Mr. Roosma and a nurse states that
7 Mr. Roosma “does not know names of medications.” *Id.* at 4-6. Correct Care Solutions faxed a
8 medical release and medication verification form to Rite Aid Pharmacy, which returned the
9 request as “Not verifiable.” *Id.* at 9. After visiting with a mental health provider, Mr. Roosma
10 was given two anti-depressants, Norvasc and Effexor. *Id.* at 14. Mr. Roosma was released on bail
11 on May 3, 2014. *Id.* at 21. Mr. Roosma maintains that he was released after having two seizures,
12 caused by an abrupt stop of medications. Dkt. 110 at 3.

13 Mr. Roosma was again booked into Pierce County Jail on June 17, 2014. Dkt. 81-1 at 25.
14 A second Screening Questionnaire noted that Mr. Roosma currently takes medication but does
15 not specify the type. *Id.* at 28. A second medication verification form completed by Rite Aid
16 Pharmacy noted a 60-day prescription on June 10, 2014 for Mirapex, a drug prescribed for
17 Restless Leg Syndrome. *Id.* at 33. The medication verification form also confirmed other then-
18 current prescriptions, including Prilosec (gastrointestinal) and Effexor (antidepressant). *Id.*

19 A June 21, 2014 healthcare request, or “kite,” requested “meds” because “I’m really sick
20 due to not having them.” Dkt. 81-1 at 37. Following a second kite, on June 23, 2014, Mr.
21 Roosma received treatment for gastrointestinal issues. *Id.* at 39, 40.

22 On June 26, 2014, Mr. Roosma sent a third kite, stating, “I have a severe case of RSP
23 [*sic*] (Restless Leg Syndrome) . . . I take Maripax [*sic*] everyday I can’t sleep or rest due to pain
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1 from it[.]” Dkt. 81-1 at 45. A signed response by a nurse notes, “Seen 6/27/14.” *Id.* The same
2 nurse’s handwritten notes reflect a June 27, 2014 discussion of Mirapex and a fax to St. Clare
3 Hospital for release of Mr. Roosma’s “RLS + shoulder pain” records. *Id.* at 49, 51.

4 On July 7, 2014, Mr. Roosma sent a fourth kite. “I was seen about a week ago for my
5 meds . . . I take Maripax [*sic*] for Restless Leg and I haven’t had my meds [and] they are
6 current[.]” Dkt. 81-1 at 54. Mr. Roosma met with a nurse on July 9, 2014 and began taking some
7 medications. *Id.* The Medication Administration Record, a medical log of medicine given to Mr.
8 Roosma, reflected administration starting on either July 9 or 10, 2014 of Lopid (cholesterol),
9 Effexor (antidepressant), Niaspan (cholesterol), and Prilosec (gastrointestinal medication). Dkt.
10 117-1 at 20; Dkt. 81-1 at 58.

11 On July 11, 2014, Mr. Roosma sent a fifth kite, stating, “I’ve sent a couple kites out to
12 find out about my Restless Leg medication “MeriPex” [*sic*] could you Please let me know what
13 the hold up is. I would like to sleep.” Dkt. 81-1 at 60. The comments portion of the kite stated,
14 “Seen 7-14-14. Medication not being filled at this time per Carver ARNP.” *Id.*

15 On July 12, 2014, Mr. Roosma sent a sixth kite, stating, “I’m kicking in my sleep! When
16 I sleep, I’m hurting my toes and there [*sic*] bleeding all over my sheets. . . I really need my RLS
17 MeriPex [*sic*] to sleep.” Dkt. 81-1 at 62. The comments portion, signed by a nurse, stated,
18 “appointment already scheduled.” *Id.* Another kite, sent on either July 10, 2014 or July 18, 2014,
19 stated, “I think I broke my foot from kicking in my sleep do [*sic*] to my RLS Restless Leg. I want
20 my Meripex [*sic*] I’m really hurting[.]” *Id.* at 64. The unsigned comment section read, “Seen.”
21 *Id.*

22 On July 21, 2014, at approximately 3am, Mr. Roosma fell from the top bed bunk onto the
23 floor. Mr. Roosma was alone in the room. Mr. Roosma states that he “did not go to sleep until
24

1 very late” because “they did not allow me to take the Mirapex[.]” Dkt. 110 at 10. Mr. Roosma
2 represents that at some point prior to the fall, he had asked an unidentified person if could sleep
3 on a lower bunk, but “they would not grant me one.” *Id.* at 8.

4 Mr. Roosma states that he is “sure it was my restless leg syndrome (RLS) that caused me
5 to fall out of bed . . . because after going into custody and being cut off of the Mirapex I started
6 feeling the familiar symptoms, severe pain in my legs.” Further, he recalls, “a few days before
7 the fall I had actually suffered injury to my foot and toes kicking the wall in my sleep, [which]
8 leaves no doubt in my mind it was my RLS that caused the fall.” Dkt. 110 at 6.

9 When asked at his deposition about self-diagnosing his own medical issues, Mr. Roosma
10 agreed with opposing counsel that he “do[es] not have any medical training that would permit
11 [him] to personally diagnose or treat any serious medical or mental health issues,” Dkt. 78 at 4,
12 although, he maintains, he is “at the worst end of the range of symptoms” for a person with
13 Restless Leg Syndrome. Dkt. 110 at 11. A doctor first diagnosed Mr. Roosma with the condition
14 in 2008, when he was first prescribed Mirapex, which made a difference “like night and day.” *Id.*
15 at 8; Dkt. 108-9 at 9. Mrs. Roosma also noticed a difference after Mr. Roosma began taking
16 Mirapex, observing that Mirapex “was a godsend . . . There was no more thrashing [and]
17 [s]udden leg movement ceased.” Dkt. 112 at 3. Since first being prescribed Mirapex, Mr.
18 Roosma reports, his doctor has increased dosage from 1mg to 3mg per day. Dkt. 110 at 10. *But*
19 *compare to* Dkt. 108-9 at 2, 8, 9 (.50 mg and .25mg).

20 After the fall incident, Mr. Roosma was transported first to Tacoma General Hospital,
21 then to Harborview Medical Center. Dkt. 110 at 8. Mr. Roosma maintains that he broke his eye
22 socket, suffered a concussion, broke his wrist, and had to have twenty-two stitches on his knee.
23 *Id.* at 9. A radiology report dated July 21, 2014, concludes that an x-ray “showed no fractures
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1 besides the left orbital roof.” Dkt. 81-1 at 80, 82. According to the Medication Administration
2 Record, Mr. Roosma was administered Mirapex from July 22, 2014 until July 24, 2014. Dkt.
3 117-1 at 20. It appears that a single person authorized administration of all medicine for Mr.
4 Roosma. Dkt. *Id.* According to RN Jonathan Slothower, the nurse on duty when Mr. Roosma fell
5 from his bed, inmates are given medication when “medically necessary,” a determination made
6 by a doctor or nurse practitioner. *Id.* at 9, 20.

7 Defendant CCS’ expert witness, Dr. Scott Bonvallet, medical director of Overlake Sleep
8 Disorders Center, is familiar with distinctions between Restless Leg Syndrome and obstructive
9 sleep apnea. Based on his review of Mr. Roosma’s medical records, Dr. Bonvallet has concluded
10 that Mr. Roosma’s Restless Leg Syndrome “was not the cause of, or even a contributor to, his
11 falling out of bed.” Dkt. 80 at 3. According to Dr. Bonvallet, the condition “does not cause
12 individuals to fall out of bed, as the movements are quite subtle[,]” and the “limb
13 twitching/awakenings from RLS occur during the first few hours of sleep . . . [but] Mr. Roosma
14 fell out of bed at approximately 0300, making it very unlikely that his fall was caused by RLS.”
15 *Id.* He opines that “there are much more probable explanations to include [Mr. Roosma’s] severe
16 obstructive sleep apnea, known history of sleep walking, or he simply fell out of bed.” *Id.*

17 In Mrs. Roosma’s experience, “sleep apnea never arose as a practical problem causing
18 restlessness[.]” Dkt. 112 at 3. Mr. Roosma acknowledges his diagnosed sleep apnea, but Mr.
19 Roosma had not been using the “CPAP,” a respiratory ventilation to aid with sleep apnea,
20 “because I was sleeping so well from the Mirapex.” Dkt. 110 at 10. Mrs. Roosma confirms that
21 Mr. Roosma tried a CPAP without success, but Mirapex “profoundly” helped his RLS
22 symptoms, “from mild irritation to severe kicking.” Dkt. 112 at 4.

1 Dr. Bonvallet has also concluded that it was reasonable and within the standard of care
2 for the jail medical providers to not prescribe Miramex. Dkt. 80 at 5. According to Dr. Bonvallet,
3 “I understand that there are substantial reasons to restrict access to such medication in the setting
4 of jail[,]” and “there were no foreseeable medical risks through its discontinuance[.]” *Id.*

5 **C. Defendant Pastor and Defendant Jackson-Kidder facts.**

6 At the time of the fall incident, Defendant Jackson-Kidder worked for Pierce County as
7 the Prison Rape Elimination Act Coordinator/Medical liaison, where she was responsible to
8 serve as a liaison between Pierce County Jail and medical providers “with regard to any issues
9 that arose out of their performance of the contract.” Dkt. 104 at ¶6. Defendant Jackson-Kidder
10 was “unaware of Justin Roosma as an inmate in the jail” and “made no decision and took no
11 actions regarding his medical care.” *Id.* at ¶8. At that time, she also lacked “authority to
12 supervise, direct or order the activities of CCS employees.” *Id.* at ¶6. In September of 2015,
13 Defendant Jackson-Kidder transitioned to become the Chief of Corrections for Pierce County
14 Sheriff’s Department in September of 2015. *Id.* at ¶1.

15 Defendant Pastor, Pierce County Sheriff, delegated the responsibility to “prepare and
16 pursue a contract for medical services” to Julie Williams, Defendant Pastor’s Chief of Staff to
17 Defendant Pastor. Ms. Williams executed the task “in consultation with other individuals who
18 had relevant specialized knowledge[.]” Dkt. 103 at ¶9. She represents that, on behalf of Pierce
19 County, Defendant Pastor was not the sole signatory to the Pierce County/CCS contract. *Id.* at
20 ¶15. *See id.* at 5.

21 **D. Claims¹ and cross-claim.**

23 ¹ Plaintiffs filed a Second Motion for Leave to File First Amended Complaint on February 15, 2018. Dkt. 135. The
24 matter is not yet ripe for review.

1 The Complaint alleges two claims under 28 U.S.C. §1983. Count One has been dismissed
2 without prejudice as to all defendants, Dkt. 29 at 12, and Count Two is alleged only against
3 Defendant Pastor and Defendant Jackson-Kidder. Dkt. 1 at ¶5.8.

4 The Complaint alleges three claims for discrimination, for violations of the Americans
5 with Disabilities Act, Count Three; §504 of the Rehabilitation Act, Count Four; and the
6 Washington Law Against Discrimination (WLAD), RCW 49.60.30, Count Five. Dkt. 1 at
7 ¶¶5.13-5.29. Common to all three discrimination claims is the allegation that the defendants,
8 including Pierce County Defendants, discriminated against Plaintiff Justin Roosma by failing to
9 accommodate a disability. *See id.* Against Pierce County Defendants the Complaint also alleges
10 common law claims of negligence and intentional infliction of emotional distress, in Count Six
11 and Count Seven, respectively. *Id.* at ¶¶5.30-5.37.

12 Pierce County Defendants allege a cross-claim for breach of contract against Defendant
13 CCS. Dkt. 30 at ¶¶3.1-3.7. *See* Dkt. 103 at 5. The cross-claim alleges that Pierce County and
14 CCS entered into a contractual agreement in early 2014 that included an indemnification
15 provision holding harmless Pierce County for acts by CCS and its agents. *Id.* The cross-claim
16 seeks specific performance for provisions of a Personal Services Agreement, a document
17 incorporated by the Pierce County/CCS contract, as well as recovery of costs and fees incurred
18 from CCS' breach of contract. *Id.* The Pierce County-CCS contract is also the subject of a
19 lawsuit filed on February 9, 2017 by Defendant CCS against Pierce County Defendants in Pierce
20 County Superior Court. Dkt. 146 at ¶2. *See* Pierce Cty. Sup. Ct. Cause No. 17-2-06200-1.

21 **E. Procedural history.**

22 Pierce County Defendants filed the Motion for Summary Judgment on January 25, 2018.
23 Dkt. 102.

1 The Court issued an Order on Defendant CCS' Motion for Summary Judgment on
2 February 8, 2018. Dkt. 127. The Order dismissed all of Plaintiffs' claims against Defendant
3 CCS, but did not dismiss Defendant CCS because of the pending cross-claim by Pierce County
4 Defendants. Dkt. 127 at 20. The Order also dismissed unnamed John Doe defendants. *Id.* at 127
5 at 10, 11.

6 Pierce County Defendants filed their Motion for Summary Judgment on January 25,
7 2018. Dkt. 102. The motion seeks summary judgment of dismissal for Plaintiffs' claims and
8 judgment in Pierce County Defendants' favor for their cross-claim.

9 Trial is scheduled for March 5, 2018. Dkt. 88.

10 II. DISCUSSION

11 A. Summary judgment standard.

12 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
13 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
14 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). The moving party is
15 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
16 showing on an essential element of a claim in the case on which the nonmoving party has the
17 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue of
18 fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for
19 the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
20 (1986) (nonmoving party must present specific, significant probative evidence, not simply "some
21 metaphysical doubt."). *See also* Fed. R. Civ. P. 56 (d). Conversely, a genuine dispute over a
22 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
23 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby*,

1 *Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
2 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

3 The determination of the existence of a material fact is often a close question. The Court
4 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
5 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*
6 *Service Inc.*, 809 F.2d at 630. The Court must resolve any factual issues of controversy in favor
7 of the nonmoving party only when the facts specifically attested by that party contradict facts
8 specifically attested by the moving party. The nonmoving party may not merely state that it will
9 discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial
10 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).
11 Conclusory, nonspecific statements in affidavits are not sufficient, and “missing facts” will not
12 be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

13 **B. Sec. 1983 claims (Count One and Count Two)**

14 The Complaint alleges two claims for constitutional deprivations under §1983, Count
15 One and Count Two. The Court previously dismissed Count One without prejudice “as to all
16 defendants” for failure to state a claim. Dkt. 29 at 12.

17 Count Two is alleged “As To DEFENDANTS PASTOR, JACKSON-KIDDER, and
18 DOES 101-500[.]” Dkt. 1 at 13. The Court previously dismissed all unnamed John Doe
19 defendants. Dkt. 127 at 10, 11. Defendant Pierce County is not a named defendant in Count Two.

20 The remaining two Pierce County Defendants, Defendant Pastor and Defendant Jackson-
21 Kidder, are shielded from damages for civil liability by qualified immunity if their conduct did
22 not violate clearly established statutory or constitutional rights of which a reasonable person
23 would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “What this means in
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1 practice is that whether an official protected by qualified immunity may be held personally liable
2 . . . generally turns on the objective legal reasonableness of the action, assessed in light of the
3 legal rules that were clearly established at the time[.]” *Wilson v. Layne*, 526 U.S. 603, 614 (1999)
4 (internal quotations omitted). In analyzing a qualified immunity defense, the Court must
5 determine: (1) whether a constitutional right would have been violated on the facts alleged, taken
6 in the light most favorable to the party asserting the injury; and (2) whether the right was clearly
7 established when viewed in the specific context of the case. *Saucier v. Katz*, 533 U.S. 194, 201
8 (2001). Courts are “permitted to exercise sound discretion in deciding which of the two prongs of
9 the qualified immunity analysis should be addressed first[.]” *Pearson v. Callahan*, 555 U.S. 223,
10 236 (2009).

11 The majority of Plaintiffs’ §1983 argument is recitation of case law. *See* Dkt. 134 at 10-
12 22. The most cogent theory to be extracted from the remainder would appear to be that the
13 defendants acted with deliberate indifference to Mr. Roosma’s serious medical need by
14 intentionally insulating themselves from making any day to day medical decisions affecting
15 inmates, including Mr. Roosma. *See id.* According to Plaintiffs, the defendants did this by, *inter*
16 *alia*, contracting out medical services to CCS, a corporation likely to harm inmates, and
17 instituting a “circular” medical grievance process. *See id.*

18 While this may be a cogent theory, it is disconnected from the conduct of each defendant
19 actually found in the record. Regarding Defendant Jackson-Kidder, the record confirms her role
20 as Chief of Corrections for Pierce County Sheriff’s Department in September of 2015, but this
21 case arose out of conduct in mid-2014. Dkt. 104 at ¶1. At that time, Defendant Jackson-Kidder
22 worked as the Prison Rape Elimination Act Coordinator/Medical Liaison, where she was
23 responsible to serve as a liaison between Pierce County Jail and medical providers “with regard
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1 to any issues that arose out of their performance of the contract.” *Id.* at ¶6. However, Defendant
2 Jackson-Kidder was “unaware of Justin Roosma as an inmate in the jail,” “made no decision and
3 took no actions regarding his medical care,” and at that time lacked “authority to supervise,
4 direct or order the activities of CCS employees.” *Id.* at ¶¶6, 8.

5 Regarding Defendant Pastor, Defendant Pastor’s Chief of Staff, Julie Williams, states that
6 Defendant Pastor “delegated to me the responsibility to prepare and pursue a contract for medical
7 services[,]” a task she executed “in consultation with other individuals who had relevant
8 specialized knowledge[.]” Dkt. 103 at ¶9. She represents that, on behalf of Pierce County,
9 Defendant Pastor was not the sole signatory to the Pierce County/CCS contract. *Id.* at ¶15. *See*
10 *id.* at 5.

11 None of the above facts—which are the only facts shown that could possibly connect
12 Defendant Jackson-Kidder and Defendant Pastor to Plaintiffs’ theory—point to objectively
13 unreasonable conduct. Nor do these facts support Plaintiffs’ theory, because the mere fact that
14 the defendants worked in supervisory roles does not result in individual liability, and to the
15 extent Plaintiffs would seek damages from the defendants because of their supervisory roles,
16 such a claim would fail. *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989). Plaintiffs have not
17 pointed to any other facts in the record specific to Defendant Jackson-Kidder and Defendant
18 Pastor. Dkt. 134.

19 Because Defendant Jackson-Kidder and Defendant Pastor are shielded by qualified
20 immunity, Pierce County Defendants’ motion for summary judgment should be granted as to Count
21 Two, which should be dismissed against Defendant Jackson-Kidder and Defendant Pastor.

22 **C. ADA and Rehabilitation Act claims (Count Three and Count Four)**
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1 Plaintiffs argue that their ADA and Rehabilitation Act claims are based “not in the denial
2 of medical treatment, but in the denial of a reasonable accommodation.” Dkt. 134 at 23.
3 According to Plaintiffs, Pierce County Defendants failed to make two reasonable
4 accommodations, where they failed to provide Mr. Roosma with Mirapex for his Restless Leg
5 Syndrome and prohibited him from sleeping on the bottom bunk. *Id.*

6 The Court rejected this argument when made against Defendant CCS. Dkt. 127 at 13. The
7 failure to give Mr. Roosma medication and permission to sleep on a bottom bunk can be
8 analogized to other situations that did not give rise to a claim for disability discrimination, such
9 as a diabetic requesting a special diet, *Reyes v. Ryan*, 2009 WL 10677722, at *2 (D. Ariz. 2009),
10 *aff’d*, 424 F. App’x 659 (9th Cir. 2011), or an inmate requiring outdoor recreation to prevent
11 depression, *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1022 (9th Cir. 2010). In such cases,
12 courts have observed the bedrock rule that the statutory protections from disability
13 discrimination extend only to “prohibit[] discrimination *because of* disability, not inadequate
14 treatment *for* disability.” *Simmons*, 609 F.3d at 1022 (emphasis added), citing to *Bryant*, 84 F.3d
15 at 248-249 (“[T]he [ADA] would not be violated by a prison’s simply failing to attend to the
16 medical needs of its disabled prisoners[.]”). Plaintiffs have presented no basis to depart from this
17 axiom.

18 Even if the facts could give rise to ADA and Rehabilitation Act claims, Plaintiffs have
19 offered no basis in the record to hold each of the three Pierce County Defendants liable.
20 Plaintiffs argue that “the Sheriff’s Office and either [Defendant] Jackson or [Defendant] Pastor
21 could have given the order . . . [but] [i]nstead, they all deferred, by policy to CCS.” [*sic*] Dkt.
22 134 at 23. From context, it appears that “the order” Plaintiffs believe should have given by Pierce
23 County Defendants was for Mr. Roosma to receive medication and be assigned to a bottom bunk.

1 *See id.* However, neither Defendant Jackson-Kidder nor Defendant Pastor were aware of Mr.
2 Roosma's condition, and at least Defendant Jackson-Kidder lacked authority to order medical
3 care by CCS. Dkt. 104 at ¶¶6, 8. There is not a sufficient showing for individual liability for
4 Pierce County Defendants to create an issue of material fact for the ADA and Rehabilitation Act
5 claims.

6 Pierce County Defendants' motion for summary judgment should be granted as to Count
7 Three and Count Four, which should be dismissed against Pierce County Defendants.

8 **D. Washington Law Against Disability (WLAD) claim (Count Five).**

9 Plaintiffs appear to have abandoned this claim against Pierce County Defendants. *See*
10 Dkt. 134.

11 The Court previously dismissed this claim against Defendant CCS because the WLAD
12 has not yet been applied to jails and Plaintiffs made no showing that Mr. Roosma's treatment by
13 Defendant CCS was caused by his disability. Dkt. 127 at 14, 15. There is no apparent reason to
14 depart from this reasoning when applied to Pierce County Defendants, especially where there is
15 no record that Pierce County Defendants were involved with Mr. Roosma's medical care.

16 Pierce County Defendants' motion for summary judgment should be granted as to Count
17 Five, which should be dismissed against Pierce County Defendants.

18 **E. Negligence (Count Six)**

19 Plaintiffs argue that Pierce County Defendants allowed a situation "to exist and
20 metastasize resulting in great potential for harm," where there was a "blanket refusal to treat any
21 sleep disorders . . . and by refusing the reassignment to a lower bunk[.]" Dkt. 134 at 24. Plaintiffs
22 have not pointed to any place in the record for such a "blanket" policy by CCS. *Id.* at 8, ¶23; Dkt.
23 113 at 9, ¶7. But even if CCS had such a policy, Plaintiffs' theory is a medical negligence claim
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1 by another name, with an expansive theory of liability extended to Pierce County Defendants.
2 Finding Pierce County Defendants liable for “allowing this situation to exist and metastasize”
3 would depend on the sufficiency of CCS’ medical care. However, the Court previously
4 dismissed the Negligence claim against Defendant CCS, finding no issue of material fact as to
5 whether Defendant CCS’ medical care fell below the standard owed. Dkt. 127 at 15, 16.
6 Therefore, the Negligence claim against Pierce County Defendants should also be dismissed.

7 Pierce County Defendants’ motion for summary judgment should be granted as to Count
8 Six, which should be dismissed against Pierce County Defendants.

9 **F. Intentional Infliction of Emotional Distress/Outrage (Count Seven)**

10 Under Washington law, the tort of Outrage requires proof of three elements: (1) extreme
11 and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual
12 result to plaintiff of severe emotional distress. *Reid v. Pierce County*, 136 Wn.2d 195, 202
13 (1998). Whether certain conduct is sufficiently outrageous is ordinarily for the jury, but it “is
14 initially for the court to determine if reasonable minds could differ.” *Dicomes v. State*, 113
15 Wn.2d 612, 630 (1989). The conduct “must be ‘so outrageous in character, and so extreme in
16 degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and
17 utterly intolerable in a civilized community.’” *Grange Ins. Ass’n v. Roberts*, 179 Wn.App. 739,
18 754 (2013).

19 Plaintiffs summarily introduce three theories of outrageous conduct: (1) the “policies of
20 not exercising due diligence in vetting CCS [as contractor for medical services at Pierce County
21 Jail], (2) not supervising or monitoring its medical contractor [CCS], and (3) not allowing
22 inmates a means to have their grievances heard.” Dkt. 134 at 23 (numeration added). The first
23 theory fails because Plaintiffs have made no showing, with admissible evidence that Pierce
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1 County Defendants failed to exercise due diligence when executing the Pierce County/CCS
2 contract. Beyond the representations of counsel² about the number of cases lodged against CCS,
3 Plaintiffs have made no showing as to what Pierce County Defendants knew about CCS when
4 executing the contract. The unrefuted showing is that Pierce County Defendants exercised due
5 diligence. *See* Dkt. 103.

6 Plaintiffs' second theory fails on account of Plaintiffs' failure to identify how each of the
7 three named Pierce County Defendants failed to supervise or monitor CCS, because it is unclear
8 what conduct Plaintiffs believe to be outrageous, and the conduct that is shown does not amount
9 to outrage under *Grange Ins. Ass'n (supra)*. The third theory relies on a supposed policy "of not
10 allowing inmates a means to have their grievances heard," but this theory is only substantiated by
11 the representations of Plaintiffs' counsel, *see* Dkt. 134, p. 8 at ¶¶25, 26, which is insufficient, nor
12 does the purported policy amount to outrage under *Grange Ins. Ass'n (supra)*.

13 Pierce County Defendants' motion for summary judgment should be granted as to Count
14 Seven, which should be dismissed against Pierce County Defendants.

15 **H. Cross-claims of Pierce County Defendants.**

16 Because all of Plaintiffs' claims have been dismissed, the only pending claim is Pierce
17 County Defendants' cross-claim against Defendant CCS. Pierce County Defendants request
18 summary judgment in their favor, that the Court find Pierce County to be contractually
19 indemnified by Defendant CCS for the acts of CCS and its agents. Dkt. 102 at 18-21.

22 ² Plaintiffs rely on a statistic about the number of times CCS has been named as a defendant in other lawsuits. Dkt.
23 134 at 5, ¶4. This number appears to be based on Plaintiffs' counsel's research. Even if the Court took judicial
24 notice of that number, there is no showing of which cases were pending at the time of the contract execution, or
whether the cases have merit. Plaintiffs elsewhere cite to "Slothower Dep. 30:15-25" for a similar proposition, *see*
Dkt. 134 at 10, but Plaintiffs did not attach the cited portion of the deposition to their pleadings. *See* Dkt. 108-2.

1 Pierce County Defendants and Defendant CCS agree that the contract at issue in the
2 cross-claim is also at issue in a Pierce County Superior Court lawsuit, but they disagree about
3 what should be done. Pierce County Defendants argue for a stay of the Pierce County case
4 pending resolution of the cross-claim by this Court, because this case was first-filed, this Court is
5 more familiar with the underlying claims, and resolving the merits of the cross-claim would have
6 a preclusive effect on the state court claims. Dkt. 143 at 6. Defendant CCS seeks dismissal of the
7 cross-claim because it is duplicative of the state court case, and allowing both cases to proceed
8 would be impermissible claim splitting. Dkt. 131 at 7, 8.

9 The Pierce County/CCS contract is the primary focus of the Pierce County Superior
10 Court case, whereas in this case, the same contract was peripheral to the pleadings. The Court
11 respectfully declines to exercise its supplemental jurisdiction over Pierce County Defendants'
12 cross-claim. *See* 28 U.S.C. §1367(c)(3).

13 The request by Pierce County Defendants for summary judgment on their cross-claim
14 should be denied without prejudice. The cross-claim should be remanded to the Pierce County
15 Superior Court.

16 **I. Other pending matters.**

17 Because all claims by Plaintiffs have been dismissed and Pierce County Defendants'
18 cross-claim remanded, all other pending matters should be stricken as moot.

19 * * *

20 Therefore, it is **HEREBY ORDERED** that:

21 (1) The Pierce County Defendants' Motion for Summary Judgment (Dkt. 102) is

22 **HEREBY GRANTED IN PART and DENIED IN PART**, as follows:

23 **A. Plaintiffs' claims:**

- 1 ▪ Sec. 1983 claims (Count One, Count Two): The request to dismiss Count
- 2 One is denied as moot. *See* Dkt. 1; Dkt. 29. The request to dismiss Count
- 3 Two is denied as moot as to Defendant Pierce County. The request to
- dismiss Count Two as to Defendant Jackson-Kidder and Defendant Pastor
- is granted and the claim dismissed.
- 4 ▪ ADA claim (Count Three): Granted. This claim is dismissed against
- Pierce County Defendants.
- 5 ▪ Rehabilitation Act claim (Count Four): Granted. This claim is dismissed
- 6 against Pierce County Defendants.
- 7 ▪ WLAD claim (Count Five): Granted. This claim is dismissed against
- Pierce County Defendants.
- 8 ▪ Negligence (Count Six): Granted. This claim is dismissed against Pierce
- 9 County Defendants.
- 10 ▪ Outrage (Count Seven): Granted. This claim is dismissed against Pierce
- County Defendants.

11 **B. Pierce County Defendants' cross-claim against Defendant CCS:**

- 12 ▪ The request for summary judgment in favor of Pierce County Defendants
- 13 for their cross-claim against Defendant CCS is denied without prejudice.

14 (2) The Court declines to exercise its supplemental jurisdiction over the sole remaining

15 claim in the case, the state law cross-claim of Pierce County Defendants against

16 Defendant CCS. The case is HEREBY REMANDED to the Pierce County Superior

17 Court. This Court makes no findings about the merits of the cross-claim.

18 (3) All other remaining motions are HEREBY STRICKEN as moot.

19 (4) The Pretrial Hearing and Trial dates are HEREBY STRICKEN.

20 This case is HEREBY DISMISSED.

21 IT IS SO ORDERED.

22 The Clerk is directed to send uncertified copies of this Order to all counsel of record and

23 to any party appearing pro se at said party's last known address.

24

1 Dated this 21st day of February, 2018.

2 

3
4 ROBERT J. BRYAN
United States District Judge